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in the custody of DOE under part B, title I of the Energy Policy and Conservation Act, *as amended* (42 U.S.C. 6231-6247) (EPCA); and (b) persons upon the SPR or other property subject to DOE jurisdiction under part B, title I of the EPCA.

§ 1048.2 Scope.

The regulations in this part apply to entry into or upon all SPR storage or related facilities, and real property subject to DOE jurisdiction or administration, or in its custody under part B, title I of the EPCA, which have been posted with a notice of the prohibitions and penalties contained in this part.

§ 1048.3 Unauthorized entry.

Unauthorized entry into or upon an SPR facility or real property subject to this part, without authorization, is prohibited.

§ 1048.4 Unauthorized introduction of weapons or dangerous materials.

Unauthorized carrying, transporting, introducing or causing to be introduced into or upon an SPR facility or real property subject to this part, of a dangerous weapon, explosive or other dangerous material likely to produce substantial injury or damage to persons or property, is prohibited.

§ 1048.5 Violations.

Willful unauthorized entry, or willful unauthorized introduction of weapons or dangerous materials into or upon real property subject to this part, constitutes a violation of these regulations. Violation of these regulations is a misdemeanor, and a person convicted of violating these regulations is subject to the maximum fine permitted by law, imprisonment for not more than one year, or both.

§ 1048.6 Posting.

Notices stating the pertinent prohibitions of §§ 1048.3 and 1048.4 and the penalties of § 1048.5 will be conspicuously posted at all entrances of each facility or parcel of real property subject to the regulations in this part, and at such intervals along the perimeters thereof as will provide reasonable assurance of notice to persons about to enter.

§ 1048.7 Applicability of other laws.

Nothing in this part shall be construed to affect the applicability of the provisions of State law or of any other Federal law.

[56 FR 1910, Jan. 17, 1991. Redesignated at 56 FR 48096, Sept. 24, 1991]

PART 1049—LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICERS OF THE STRATEGIC PETROLEUM RESERVE

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AUTHORITY: 42 U.S.C. 7101 *et seq.*

SOURCE: 56 FR 58492, Nov. 20, 1991, unless otherwise noted.

§ 1049.1 Purpose.

The purpose of these guidelines is to set forth internal Department of Energy (DOE) security policies and procedures regarding the exercise of arrest authority and the use of force by DOE employees and DOE contractor and subcontractor employees while discharging their official duties pursuant to section 661 of the Department of Energy Organization Act.

§ 1049.2 Scope.

These guidelines apply to the exercise of arrest authority and the use of force, as authorized by section 661 of the Department of Energy Organization Act, as amended, 42 U.S.C. 7101 *et seq.*, by employees of DOE and employees of DOE's SPR security contractor and subcontractor. These policies and procedures apply with respect to the protection of:

(a) The SPR and its storage or related facilities; and

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(b) Persons upon the SPR or its storage or related facilities.

§ 1049.3 Definitions.

(a) *Act* means sections 661 of the Department of Energy Organization Act, as amended, (42 U.S.C. 7270a).

(b) *Arrest* means an act resulting in the restriction of a person's movement, other than a brief consensual detention for purposes of questioning about a person's identity and requesting identification, accomplished by means of force or show of authority under circumstances that would lead a reasonable person to believe that he was not free to leave the presence of the officer.

(c) *Contractor* means a contractor or subcontractor at any tier.

(d) *Deadly force* means that force which a reasonable person would consider likely to cause death or serious bodily harm.

(e) *Protective Force Officer* means a person designated by DOE to carry firearms pursuant to section 661 of the Act.

(f) *SPR* means the Strategic Petroleum Reserve, its storage or related facilities, and real property subject to the jurisdiction or administration, or in the custody of the Department of Energy under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247).

(g) *Suspect* means a person who is subject to arrest by a Protective Force Officer as provided in these guidelines.

§ 1049.4 Arrest authority.

(a) Under the Act, the authority of a DOE Protective Force Officer to arrest without warrant is to be exercised only in the performance of official duties of protecting the SPR and persons within or upon the SPR.

(b) A Protective Force Officer is authorized to make an arrest for a felony committed in violation of laws of the United States, or for a misdemeanor committed in violation of laws of the United States if the offense is committed in the officer's presence.

(c) A Protective Force Officer also is authorized to make an arrest for a felony committed in violation of laws of the United States if the Officer has reasonable grounds to believe that the felony has been committed, or that the

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suspect is committing the felony, and is in the immediate area of the felony or is fleeing the immediate area of the felony. "Reasonable grounds to believe" means that the facts and circumstances within the knowledge of the Protective Force Officer at the moment of arrest, and of which the Protective Force Officer has reasonably trustworthy information, would be sufficient to cause a prudent person to believe that the suspect had committed or was committing a felony.

§ 1049.5 Exercise of arrest authority—General guidelines.

(a) In making an arrest, and before taking a person into custody, the Protective Force Officer should:

(1) Announce the Protective Force Officer's authority (*e.g.*, by identifying himself as an SPR Protective Force Officer);

(2) State that the suspect is under arrest; and

(3) Inform the suspect of the crime for which the suspect is being arrested. If the circumstances are such that making these announcements would be useless or dangerous to the Officer or to another person, the Protective Force Officer may dispense with these announcements.

(b) At the time and place of arrest, the Protective Force Officer may search the person arrested for weapons and criminal evidence, and may search the area into which the person arrested might reach to obtain a weapon to destroy evidence.

(c) After the arrest is effected, the person arrested shall be advised of his constitutional right against self-incrimination ("*Miranda* warnings"). If the circumstances are such that immediately advising the person arrested of this right would result in imminent danger to the Officer or other persons, the Protective Force Officer may postpone this requirement. The person arrested shall be advised of this right as soon as practicable after the imminent danger has passed.

(d) As soon as practicable after the arrest is effected, custody of the person arrested should be transferred to other Federal law enforcement personnel (*e.g.*, U.S. Marshals or FBI agents) or to local law enforcement personnel, as

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appropriate, in order to ensure that the person is brought before a magistrate without unnecessary delay.

(e) Ordinarily, the person arrested shall not be questioned or required to sign written statements unless such questioning is:

(1) Necessary to establish the identity of the person arrested and the purpose for which such person is within or upon the SPR;

(2) Necessary to avert an immediate threat to security or safety (e.g., to locate a bomb); or

(3) Authorized by other Federal law enforcement personnel or local law enforcement personnel responsible for investigating the alleged crime.

§ 1049.6 Exercise of arrest authority— Use of non-deadly force.

(a) When a Protective Force Officer is authorized to make an arrest as provided in the Act, the Protective Force Officer may use only that degree of non-deadly force that is reasonable and necessary to apprehend and arrest the suspect in order to prevent escape or to defend the Protective Force Officer or other persons from what the Officer reasonably believes to be the use or threat of imminent use of non-deadly force by the suspect. Verbal abuse by the suspect, in itself, is not a basis for the use of non-deadly force by a Protective Force Officer under any circumstances.

(b) Protective Force Officers should consult the local DOE Office of Chief Counsel and contractor legal counsel for additional guidance on the use of non-deadly force in the exercise of arrest authority, as appropriate.

§ 1049.7 Exercise of arrest authority— Use of deadly force.

(a) The use of deadly force is authorized only under exigent circumstances where the Protective Force Officer reasonably believes that such force is necessary to:

(1) Protect himself from an imminent threat of death or from serious bodily harm;

(2) Protect any person or persons in or upon the SPR from an imminent threat of death or serious bodily harm.

(b) If circumstances require the use of a firearm by a Protective Force Offi-

cer, the Officer shall give a verbal warning (e.g., an order to halt), if feasible. A Protective Force Officer shall not fire warning shots under any circumstances.

§ 1049.8 Training of SPR Protective Force Officers and qualification to carry firearms.

(a) Protective Force Officers shall successfully complete training required by applicable Department of Energy orders prior to receiving authorization to carry firearms. The Department of Energy Office of Safeguards and Security shall approve the course.

(b) Prior to initial assignment to duty, Protective Force Officers shall successfully complete a basic qualification training course which equips them with at least the minimum level of competence to perform tasks associated with their responsibilities. The basic course shall include the following subject areas:

- (1) Legal authority, including use of deadly force and exercise of limited arrest authority;
- (2) Security operations, including policies and procedures;
- (3) Security tactics, including tactics for Protective Force Officers acting alone or as a group;
- (4) Use of firearms, including firearms safety and proficiency with all types of weapons expected to be used;
- (5) Use of non-deadly weapons, weaponless self-defense, and physical conditioning;
- (6) Use of vehicles, including vehicle safety in routine and emergency situations;
- (7) Safety, first aid, and elementary firefighting procedures;
- (8) Operating in such a manner as to preserve SPR sites and facilities;
- (9) Communications, including methods and procedures.

(c) After completing training, and receiving the appropriate security clearance, Protective Force Officers shall be authorized to carry firearms and exercise limited arrest authority. Protective Force Officers shall receive an identification card, which must be carried whenever on duty and whenever armed.

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(d) On an annual basis, each Protective Force Officer must successfully complete training sufficient to maintain at least the minimum level of competency required for the successful performance of all assigned tasks identified for Protective Force Officers.

(e) Protective Force Officers shall be qualified in the use of firearms by demonstrating proficiency in the use of firearms on a semiannual basis prior to receiving authorization to carry firearms. Protective Force Officers shall demonstrate proficiency in the use of all types of weapons expected to be used while on duty under both day and night conditions. In demonstrating firearms proficiency, Protective Force Officers shall use firearms of the same type and barrel length as firearms used by Protective Force Officers while on duty, and the same type of ammunition as that used by Protective Force Officers on duty. Before a Protective Force Officer is qualified in the use of firearms, the Officer shall complete a review of the basic principles of firearms safety.

(f) Protective Force Officers shall be allowed two attempts to qualify in the use of firearms. Protective Force Officers shall qualify in the use of firearms within six months of failing to qualify. If an Officer fails to qualify, the Officer shall complete a remedial firearms training program. A Protective Force Officer who fails to qualify in the use of firearms after completion of a remedial program, and after two further attempts to qualify shall not be authorized to carry firearms or to exercise limited arrest authority.

§ 1049.9 Firearms and firearms incidents.

(a) Protective Force Officers shall receive firearms of a type suitable to adequately protect persons and property within or upon the SPR. Firearms and ammunition shall be secured, inventoried, and maintained in accordance with applicable Department of Energy orders, when not in use.

(b) The authority of a Protective Force Officer to carry firearms and to exercise limited arrest authority shall be suspended if the Officer participates in an incident involving the use of firearms. In such circumstances, the Offi-

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cer shall be assigned to other duties, pending completion of an investigation.

(c) Incidents involving the discharge of firearms shall be reported to the Department of Energy Headquarters Emergency Operations Center immediately, and to the SPR Project Management Office Security Division within 24 hours. The Strategic Petroleum Reserve Project Manager shall appoint a committee to investigate the incident.

§ 1049.10 Disclaimer.

These guidelines are set forth solely for the purpose of internal Department of Energy guidance. These guidelines do not, and are not intended to, and may not be relied upon to, create any substantive or procedural rights enforceable at law by any party in any matter, civil or criminal. These guidelines do not place any limitations on otherwise lawful activities of Protective Force Officers or the Department of Energy.

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APPENDIX I TO PART 1050—DOE FORM 3735.2—FOREIGN GIFTS STATEMENT